IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO. 505 OF 2007

Ramesh Haridas Merchant ... Petitioner

Vs.

Miss Mohini R. Shivdasani & Ors. Respondents

Mr. Y.S.Jahagirdar, Senior Counsel, with
Mr. P.S.Dani, Advocate, for the petitioner.
Mr. V.A.Thorat, Senior Counsel, with Ms. Ranjana Parikh,Advocate, for respondent No.1.

CORAM: J.H.BHATIA,J.

DATE: 30th November,2007.

P.C.

1. Heard learned Senior Counsel for both the sides. Perused the relevant evidence and judgments passed by the Courts below.

2. Respondent No.1, Miss Mohini, is a landlady and

the original plaintiff. The present applicant, Ramesh is the original defendant No.2. Respondents Nos. 2 and 3 are defendants Nos. 3 and 4.

3. The dispute pertains to flat No.21, situated on the second floor, Nanak Niwas, Warden Road, Mumbai. This flat was originally allotted to Ramchand Shivdasani, father of the plaintiff. After his death, it was transferred to his widow, Smt. Sati Shivdasani on the basis of the nomination and before her death, Smt. Sati Shivdasani nominated the plaintiff and she became the owner of the flat. Her mother, Smt. Sati Shivdasani died in 1986. The flat admeasures 1300 sq. ft. and consists of two bedrooms, one hall and a kitchen. This flat was given to deceased defendant no.1 Haridas on leave and license basis. Due to changes in law, he became the tenant. Haridas died during the pendency of the suit. The remaining three defendants are the sons of Haridas. The plaintiff filed the suit for eviction in 1991 mainly on two grounds. Firstly, that she and her two sisters were residing with their brother Hira in flat No.61 in the same building. However, her brother had asked them to vacate the house. Therefore, she required this flat for her own accommodation and she also proposed to accommodate her two sisters, viz. Sheela and Pushpa. It is also contended that the defendants had sufficient alternate

accommodation in Mumbai. The suit was contested denying the contentions. The trial Court, after hearing the evidence, dismissed the suit. The plaintiff challenged the dismissal of suit by filing Appeal No.329 of 2001. The appellate Bench of the Small Causes Court, Bombay, allowed the appeal and passed a decree of eviction against the defendants. The defendant No.2 has filed the present Revision Application challenging the said decree.

4. The record reveals that flat No.61 in the said building originally belonged to one Chhoga, uncle of the plaintiff. The said Chhoga before his death nominated his nephew Hira and on the basis of the nomination, Hira became owner of the flat No.61. Hira and his 3 sisters, viz. Pushpa, Sheela and the plaintiff, Miss Mohini were unmarried. All the three sisters were living with their brother Hira. When the suit was filed in 1991, it was the contention of the plaintiff that Hira had asked his sisters to vacate the house and, therefore, the plaintiff needed the suit premises for her own use and also to accommodate her two sisters. Pending the suit, Sheela died. Hira also died and he nominated Pushpa as the owner of flat No.61 and thus presently, Pushpa is the owner of flat No.61. Therefore, admittedly, now the plaintiff does not require the suit flat to accommodate her sisters. However, her contention is that she is not

pulling on well with her sister Pushpa who is presently owner of flat No.61 and therefore, Pushpa has given a letter to her to vacate the premises. Therefore, the plaintiff wants the suit flat for her own accommodation.

5. Admittedly, the suit flat No.21 originally belonged to Ramchand and the plaintiff the present owner is the landlady. From the evidence of the defendants themselves, it appears that initially, Haridas and his sons had purchased a flat in Vallabh Apartment, but as it was small and was not sufficient to accommodate the growing family, that flat was sold away and with the consideration of that flat, the defendants purchased two flats, one at Nepean sea Road and another at Prabhadevi, both in Mumbai. Defendant No.3, Hamir has already shifted to Baroda for his business purpose and he is residing there. Their father, Haridas has also died. The sisters are living in different flats as they are all married and well-settled financially. Thus, only defendants Nos. 2 and 4, the two brothers are living in Mumbai with their families. Defendant No.4 - Arun is living at Nepean Sea Road flat and defendant No.2 - Ramesh, who is revisional applicant claims that he is residing in the suit flat.

6. The learned Senior Counsel for the plaintiff-respondent contended that as per admission of

the defendants in evidence, Prabhadevi and Nepean Sea Road flats were purchased by the family out of the consideration of the flat in Vallabh Apartment, which was sold away. There is nothing on record to show that Prabhadevi flat has been sold away or is not in possession of the defendants. In view of this, it appears that defendants Nos. 2 and 4 have two flats in Mumbai and both are in high societies. Nepean Sea Road as well as Prabhadevi, both are areas where very rich and influential people reside. They have two flats. The defendant No.4 is using the Nepean Sea Road flat, therefore, it can be assumed that Prabhadevi flat is available for defendant No.2, the present applicant. Thus, it is clear that defendants have alternative sufficient accommodation for themselves. The plaintiff is the owner of the suit flat and she wants it for her own residence. It appears that she is living in the flat of her sister with her permission and her sister has given a letter to vacate the same. In such circumstances, it is difficult to hold that the plaintiff does not require the suit flat bonafide for her own use and occupation.

7. Mr. Jahagirdar, learned Senior Counsel for defendant No.2 - applicant contended that in the written notes of arguments filed before the appellate Court, it was pleaded for the plaintiff that Prabhadevi flat has

been sold away. However, Mr. Thorat, learned Senior Counsel for the plaintiff pointed out that the defendants had never taken a plea nor given any evidence to show that Prabhadevi flat was sold away and was not available to the defendants. However, it appears that on behalf of defendants, it was argued that Prabhadevi flat was already sold away. In view of this argument, the learned Counsel for the plaintiff had stated that the respondents have suppressed the fact about the sale of Prabhadevi flat. It only means that if the flat was sold away, that was never pleaded nor any evidence was given about the same.

8. Taking into consideration the material on record, I find that the plaintiff bonafide requires the suit flat for her own use and occupation as she is presently living in her sister's flat with her permission and that permission has been already withdrawn. On the other hand, defendants Nos. 2 and 4 have two flats in Mumbai and the accommodation is sufficient for them. The learned appellate Court has taken this view and by no stretch of imagination, that view is illegal or irregular. Therefore, I do not see any reason to interfere with the same.

9. In the result, the Revision Application stands rejected.

10. At this stage, Mr. Jahagirdar, learned Senior Counsel on behalf of defendant No.2 - applicant makes a request that the applicant may be granted reasonable time to find alternate accommodation and to vacate the premises. He also undertakes to clear the arrears of rent which may be due by this time. The learned Counsel for the plaintiff has no objection to grant reasonable time. Therefore, in the interest of justice, subject to filing of an undertaking by defendant No.2 - revision applicant, within two weeks in this Court to vacate the suit premises on or before end of February, 2008 and on his paying the arrears of rent, if any, the execution of decree shall be stayed till the end of February, 2008 on condition that the defendant No.2 shall not create any third party interest and shall not cause any damage to the property in any manner.

(J.H.BHATIA,J.)